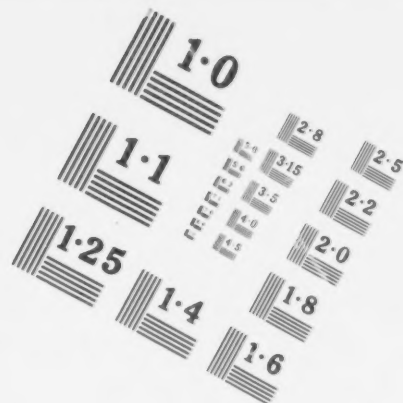
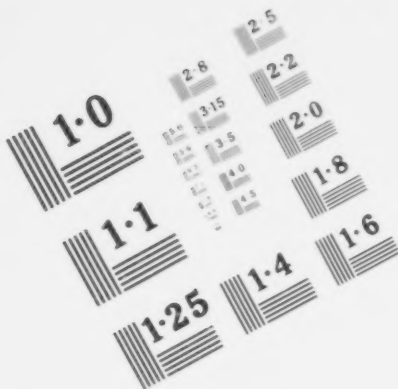
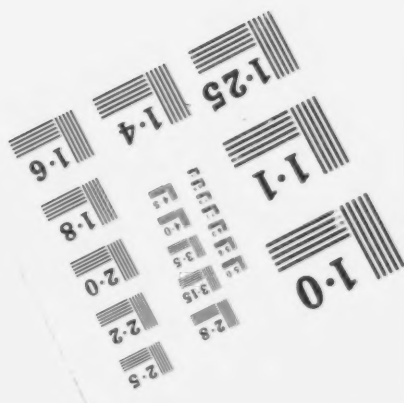
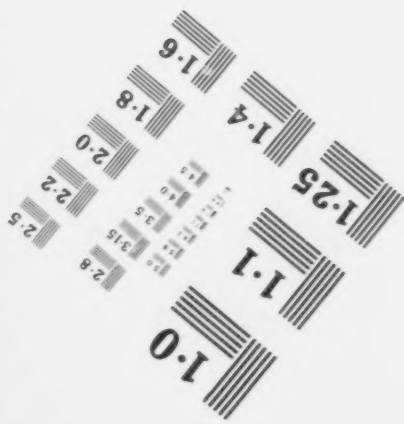




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and Other Cruel, Inhuman
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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

CHILE */

[5 November 1990]

*/ The present document contains additional information requested by the Committee against Torture at its third session at the end of the consideration of the initial report of Chile on 23 November 1989 (CAT/C/SR.40 and 41).

I. THE USE OF TORTURE DURING THE PREVIOUS REGIME

1. General framework of repression

The coup d'état which took place on 11 September 1973 meant the destruction of the entire institutional system which had been built up in Chile during decades of uninterrupted democratic functioning.

The National Congress was closed down; political parties were outlawed or "recessed"; trade union organizations were stripped of any power; the universities were taken over; harsh censorship of the mass media and books was established; etc.

In addition, constituent, legislative and executive power was concentrated in the hands of the Government Junta composed of the Commanders-in-Chief of the Army, the Navy, the Air Force and the Corps of Carabineros. The Supreme Court of Justice gave in completely to this state of affairs, even recognizing that the Junta was "empowered" automatically to amend the Constitution by means of decree-laws, and it abandoned its authority over the military courts in time of war.

This concentration of power was reflected from the outset in a strongly repressive policy based on virtually unlimited legal powers that were self-granted following the declaration of an "internal state of war". This policy was characterized by very serious forms of human rights violations: executions without trial; executions following trials in which due process was not guaranteed; mass arrests of persons who were taken to concentration camps where they were subjected to very degrading conditions of detention and many of whom "disappeared"; widespread torture and ill-treatment; sentences to terms of imprisonment for offences which were basically nothing more than attempts to resist the coup or for membership of specific political organizations; etc.

This is the context in which the use of torture and other cruel, inhuman or degrading treatment or punishment was situated during the previous régime.

2. Phases in the use of torture

Torture and cruel treatment were repressive methods used against political prisoners throughout the term of office of the previous Government. This is not at all surprising, since the dictatorship was always based on the logic of war, according to which all opponents were seen as enemies to be eliminated by any means that might be deemed effective.

Both physical and psychological forms of torture were used. The main physical methods of torture were: kicking and beating; giving electric shocks by means of the "grill" or cattle prods; forcing persons to stay in a particular position; stringing up, including the "parrot perch"; denying food and water; preventing persons from sleeping; immersion in water to cause suffocation; sexual abuse, including rape; prolonged blindfolding to prevent persons from seeing anything; prolonged exposure to bright lights or loud music; forcing persons to eat excrement and drink urine; ear boxing; burning with acid or cigarettes; and pulling out fingernails.

The main psychological methods used were: insults and harassment; threatening victims and/or their relatives with torture and death; mock shootings; threats to arrest relatives; forcing victims to listen to or watch other persons being tortured; making victims believe that their relatives were being detained or tortured; making victims believe that their friends had accused them; photographing or filming victims in compromising situations; putting pressure on detainees to become collaborators; and forcing detainees to sign accusations or confessions of guilt.

Apart from vengeance and punishment, the basic purposes of the use of torture were to instil widespread fear in the population to discourage it from opposing the régime; to destroy or neutralize victims physically or psychologically; and to obtain information with a view to the more effective repression of opposition political and social movements.

Although torture was used for such purposes throughout the entire term of office of the previous Government, each one was prevalent at various times, so that there were different historical phases in the use of that practice. They were as follows:

A. Widespread intimidation

This corresponded to the beginnings of the dictatorship, from the time of the coup d'état itself on 11 September 1973 until mid-1974.

During this phase, torture and ill-treatment were used indiscriminately and brutally on the tens of thousands of political prisoners of that time. The aim was not so much to destroy the victims or obtain information from them as to instil paralysing fear in the population which would make it possible to consolidate an authoritarian régime that was totally inconsistent with the levels of awareness and usual practices of Chilean society.

This phase coincided with mass arrests of supporters of the deposed Government and the use of the method of political executions and detentions which were followed by disappearances and carried out indiscriminately throughout the country. During this phase, torture and ill-treatment were practised by Army, Navy, Air Force, Carabineros and Police Department officials. In early 1974, the centralized system for the co-ordination of the repression began to take shape and the persons who had previously, although never exclusively, been using such methods began to train "professionally".

The total number of persons who were victims of torture during this phase is very difficult to estimate, since torture was practised so widely and the persons who were subjected to it did not dare report it, fled the country after being released or were simply killed. Moreover, national and international human rights organizations were not equipped at that time to keep records of numbers of cases of torture and naturally focused on complaints of even more serious problems such as executions and cases of missing detainees.

B. Physical destruction of opponents

This was the period while DINA was in operation, i.e. from mid-1974 to early 1978.

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During this phase, torture became a key element of the planned system of detentions followed by disappearances that was used by DINA for as long as it existed. In other words, torture became primarily a method designed to exterminate political opponents. Obviously, it was also used as a method to extract all possible information from a detainee before he was eliminated.

In view of the nature of this phase, torture was practised in secret places of detention and by specialized staff.

The objective of widespread intimidation naturally continued to exist, but DINA allowed many of its victims to be released after the abduction-concealment-torture process and they then reported its secret extermination machinery.

Although it was possible during this period to have a more accurate idea of the number of victims, since it may be assumed that practically all persons arrested by DINA were subjected to torture, national and international human rights organizations did not give priority to specific measures in this regard because they were naturally focusing all their efforts on preventing the continued killing of persons who had been detained. In so doing, they were obviously also implicitly combating the specific use of torture.

C. Obtaining information as a matter of priority

This phase lasted from the time of DINA's replacement by CNI (national Information Agency) until the national protests held in 1983.

This phase coincided with the political changes the dictatorship tried to bring about in 1978 in an attempt to institutionalize a stable authoritarian régime that would allow controlled expressions of dissent and rid it of the extremely brutal image it had had so far.

Torture thus became a method intended primarily to obtain the necessary information to keep dissident political and social movements under control.

During this phase, torture stopped being intended to destroy detainees physically. The aim was more to harm persons psychologically than physically or, in other words, to terrorize them into halting or curtailing their opposition activities.

To this end, doctors were brought in when torture was being practised during this period; they were concerned that the injuries inflicted might be fatal and helped to conceal such practices. In some cases, however, detainees did die, either because torture was brutally practised without any request for "medical support" or because the doctors miscalculated the victims' ability to resist.

During this phase, torture was usually practised in secret places of detention belonging to the National Information Agency. Members of the Police Department and the Corps of Carabineros took part in these practices to a much lesser extent, although some Carabineros (police) stations worked closely with CNI.

During this period, national human rights organizations became fully involved in action to combat this particular form of human rights violation. Their concerns were to keep a record of complaints; to advise victims who decided to file criminal complaints; to make public complaints; and to treat victims for the physical and psychological effects of torture.

Rough estimates of the number of persons tortured during this period cannot be made for the reasons referred to above: most of the victims were terrorized, with the result that they refrained from taking any action, such as filing complaints with the courts, which might mean further suffering and which, in view of the judiciary's usual approach of not wanting or being able to punish such offences, would not yield any results.

In any event, as of 1979, the Vicaría de la Solidaridad of the Office of the Archbishop of Santiago kept records of the number of complaints of torture filed through it with the courts of justice. They were as follows:

Table 1

Complaints of torture filed with the courts of justice through
the Vicaría de la Solidaridad

1979	143
1980	91
1981	68
1982	57

Total	359

Source: Vicaría de la Solidaridad of the Office of the Archbishop of Santiago.

It should be pointed out that a human rights organization specializing in torture, namely, the National Commission against Torture, was established at the end of this period.

D. Obtaining information and public intimidation

This phase began at the time of the national protests in 1983 and continued virtually until the end of the previous régime.

The national protests which began on 11 May 1983 welded together a broad movement of opposition to the régime which forced it to make major political concessions and, at the same time, since its very existence was threatened, to step up the repression significantly. This led, inter alia, to a sharp increase in the use of torture and, in particular, various types of cruel, inhuman and degrading treatment, which included violent and rough treatment by Government agents of persons who were in detention or had been released and which were not as systematic in nature as torture. According to the figures recorded by the Chilean Commission on Human Rights, large numbers of persons were thus tortured or suffered cruel, inhuman or degrading treatment during this phase, as shown by the following table:

Table 2

Cases of deaths by torture; torture; and cruel,
inhuman or degrading treatment

	Deaths by torture	Torture	Cruel treatment
1983	-	434	1 180
1984	2	297	1 541
1985	2	169	746
1986	1	299	864
1987	2	134	644
1988	1	139	1 234
1989	1	78	665
Total	9	1 550	6 874

Source: Chilean Commission on Human Rights and Vicaría de la Solidaridad of the Office of the Archbishop of Santiago.

It is important to note that, as action by armed left-wing groups against the dictatorship increased, torture in secret premises was aimed primarily at detainees of that kind for the purpose of obtaining information from them and, naturally, punishing them.

During this phase, torture normally continued to be carried out by CNI officials in their secret places of detention, while cruel treatment was practised primarily by Carabineros, although CNI officials and, to a lesser extent, the Police Department and the Army also took part.

It is also important to point out that, during this phase, human rights organizations took stronger action specifically in order to combat torture, in terms both of legal defence and of public complaints. The Sebastián Acevedo Movement against Torture was also established; it was named after a man who publicly immolated himself in the City of Concepción on 11 November 1983 as a desperate form of protest against the arrest and possible torture of one of his daughters. This Movement systematically held non-violent lightning meetings that were designed to make public opinion aware of the problems of torture.

Attention should also be drawn to the record-keeping and complaint-filing work done by the Committee for the Defence of the People's Rights (CODEPU) and to the treatment and support for victims of torture provided by the Social Welfare Foundation of the Christian Churches (FASIC).

When Pinochet was defeated in the referendum of 5 October 1988, the entire repressive policy declined markedly and, as a result, there was a sharp drop in torture and cruel, inhuman and degrading treatment. CNI was dissolved shortly after the end of the previous régime.

3. The institutional framework which permitted torture

The use of torture was of course prohibited and punishable under the Chilean Constitution and law. However, the regulations regarding procedures for the detention of individuals and the suspension of the remedy of amparo during the states of emergency, combined with the attitudes of the courts, provided an ideal framework for the practice of torture in Chile under the former régime.

From the outset, the dictatorship governed under continuous states of emergency which seriously restricted basic individual rights, including the right of individual freedom.

Paradoxically, however, until the entry into force of the new Constitution in March 1981 - i.e. during the most repressive phases of the former régime - no specific restrictions of the remedy of "habeas corpus", known in Chile as "amparo", were introduced. Only in Constitutional Act No. 4 of 13 September 1976 was it stipulated that protection and amparo remedies "will be permitted only in so far as they are wholly compatible with the legal provisions governing such states of emergency" (article 14).

Despite this, the courts systematically rejected applications for amparo or habeas corpus accepting without question denials by the Executive Power that the individual who was the subject of the application had been arrested, even when the application was accompanied by statements of witnesses of the arrest. Moreover, in the case of acknowledged arrests, ordered under the powers deriving from the states of emergency, the courts rejected applications without even acknowledging their own competence to ascertain the legality of the arrest.

The Constitution of 1980 specifically stipulated that, during the period of "transition" (i.e. until 1989 or 1990), the President of the Republic could declare a state of danger of disturbance of internal peace, empowering him to detain persons "for up to five days in their own homes or in places other than prisons" and "upon occurrence of terrorist acts with grave consequences", to "extend this period for 15 additional days". In addition, the Constitution also states that "the measures adopted by virtue of this provision shall not be subject to any recourse whatsoever, except for reconsideration thereof by the authority which ordered them".

The harm done to the right to individual freedom by the above-mentioned provisions was made worse by the rulings of the Supreme Court pertaining to them. For example, the Court ruled that it could not review governmental decisions as to which acts were "terrorist" and their degree of gravity. The Court also ruled that an extension of the detention period did not require a presumption that the person detained may have been involved in any terrorist act under investigation, but that it was sufficient for the arrest warrant to mention the occurrence of such acts in any part of the national territory. The Supreme Court also agreed that "places other than prisons" should include the secret detention premises of CNI. Finally, the Court did not even discharge its obligation to ensure that arrests were carried out in accordance with the law. Consequently, it did not care whether the warrant was issued before or after the actual arrest; whether the Appeals Courts delayed much longer than the period stipulated by law (24 Hours) before ruling on an

application; whether the Executive Power held an individual in secret and illegally before acknowledging the fact; whether an arrest was made by members of CNI, who had no powers to do so; whether the authorities denied magistrates and judges the right to visit the premises of CNI in person, and so on.

All of this facilitated the systematic use of arbitrary detention and torture by the security forces. Moreover, the Supreme Court actually encouraged the practice by considering as conclusive evidence statements made out of court by the individuals concerned and obtained in the course of interrogations conducted in CNI premises and by considering as authoritative public instruments documents signed in those premises in which detainees "admitted" their participation in subversive political activities.

In addition to the factors described above, it is important to emphasize the complete impunity with which acts of torture were carried out under the former régime. Complaints regarding this extremely serious infringement of human rights were referred to the military tribunals if there were grounds for presuming that the persons responsible were subject to military jurisdiction. Naturally, in the circumstances, no satisfactory judicial outcome was achieved. Moreover, the few criminal court judges who demonstrated any diligence in conducting the preliminary investigations (in particular, René García Villegas) were intimidated, prosecuted and punished.

Thus far, then, the Judiciary has proved totally incapable of punishing acts of torture perpetrated against political detainees.

4. Main falsehoods in the report submitted to the Committee against Torture by the Government of Chile in November 1989

Nowadays, any Government which systematically resorts to torture also systematically resorts to lying in order to conceal the fact. This is because the use of torture as a method of law enforcement is considered wholly unacceptable by present moral standards.

Consequently, the general impression conveyed by the former Government's report to your Committee is absolutely false. It attempts to give the idea that systematic torture of political detainees was non-existent under the former régime. Given the character of that régime, this is hardly surprising or even worth mentioning. Nevertheless, there are a number of statements contained in the summary record of the 41st meeting of 23 November 1989 which are particularly grotesque and therefore worth noting:

In paragraph 3, it is stated as proof of the fact that acts of torture had been punished in Chile that, in two recent cases, a police official and a security officer had been tried by the courts and convicted of acts of torture resulting in death and had been sentenced to capital punishment.

That is absolutely untrue. It obviously refers to the four death sentences handed down under the former régime by non-military courts. They concerned two members of the Carabineros (Jorge Sagredo Pizarro and Carlos Topp Collins, who were shot by firing squad on 29 January 1985) and two members of the CNI (Gabriel Hernández Anderson and Eduardo Villanueva Márquez, who were shot on 22 October 1982). However, in both cases, the sentences

imposed were for ordinary crimes - the theft of more than \$1 million in a bank hold-up and the murder of two bank officials in the case of the CNI officers, and multiple offences and aggravated homicide in the case of the Carabineros officers.

It is thus particularly reprehensible that these two cases should be invoked to demonstrate that, under the dictatorship, the Chilean legal system punished acts of torture, as is again stated in paragraph 10 of the summary record.

In paragraph 5, as a justification of the reservations formulated by the dictatorship to the Convention against Torture, it is stated that one of the reasons for the reservations was that the Government wished to leave to the following Government the entire responsibility of deciding whether it agreed to be bound by all the provisions of the Convention.

This "reason" is utterly absurd. On those grounds, the former Government would have had to refrain completely from ratifying the Convention. Moreover, it is a blatant act of bad faith in that the sole concern of the former Government at the end of its rule was to ensure that the democratic Government was institutionally as hamstrung as possible. Finally, that Government was well aware that the opposition at the time was totally against the reservations formulated.

In paragraph 15, it is stated categorically that confessions extracted by torture had no value as evidence in court. Obviously, that was true for official purposes. We are, after all, approaching the end of the twentieth century! But at bottom it was completely untrue, in that all the military and non-military courts, including the Supreme Court, as has already been noted, treated as very reliable evidence out-of-court statements obtained from the individuals concerned in the course of interrogations conducted in the premises of CNI; they also considered as authoritative public instruments documents signed in those premises in which detainees "admitted" their participation in subversive political activities.

II. THE DEMOCRATIC GOVERNMENT AND THE ELIMINATION OF TORTURE AS A MEANS OF LAW ENFORCEMENT

The democratic Government has put an end to the repressive policy which epitomized the dictatorship and has of course eliminated systematic torture.

Accordingly, the Government has withdrawn the fundamental reservations formulated by the dictatorship in September 1988, in ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations in 1984, and has also withdrawn the reservations formulated in regard to the Inter-American Convention to Prevent and Punish Torture, adopted by the Organization of American States (OAS).

The nature and scope of the reservations regarding the United Nations Convention were such as to render Chile's ratification of that Convention absurd. The first reservation was to the effect that the principle of considered obedience (whereby a subordinate cannot avail himself of the fact that he carried out an act of torture on superior orders as exonerating him

from criminal responsibility) did not apply if the subordinate queried the order and the superior confirmed it. In such cases, the subordinate was exonerated from criminal responsibility for the offence committed.

This reservation rendered Chile's ratification of the Convention totally meaningless, since it left open the possibility that the torturer could invoke "superior orders" as grounds justifying the act of torture. Moreover, this reservation ignored one of the most valued contemporary moral principles: the duty to disobey unlawful orders. This reservation also rendered inoperative the obligation under the Convention to make instruction on the absolute prohibition of torture an integral part of the professional training of law-enforcement officers.

The second reservation was to the effect that article 3, which stipulates that "no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" was not applicable to Chile.

Aside from its gravity, this reservation also obviously helps to weaken Chile's undertaking regarding international protection against torture.

Finally, although it is not strictly speaking a reservation, the refusal of the dictatorship to recognize the competence of the Committee against Torture, as provided in article 20, meant that, given the situation in the country, the ratification of the Convention was utterly meaningless as far as Chile was concerned.

The withdrawal of these reservations (only one, concerning the settlement of disputes between States parties was retained) is thus further proof of the unequivocal resolve of the democratic Government to eradicate torture.

However, it would be unrealistic to hope that such a deep-rooted practice could be completely eliminated at a stroke. In any event, when the democratic Government assumed power, it is clear that cases of torture or ill-treatment of political detainees were isolated occurrences and the authorities undertook to have every report of such acts thoroughly investigated.

Evidence of this is the fact that only about 10 complaints of torture of detainees have been made since March of this year, almost all of them against members of the Carabineros and, in particular, a specific station (Santiago Station No.3).

The more widespread phenomenon of ill-treatment of ordinary detainees obviously persists in Chile. In this regard, we would be most grateful if the Committee against Torture could provide us with information on the most successful international experience regarding legal norms and measures guaranteeing the right to physical and mental integrity of ordinary detainees or prisoners.

We are at your disposal for any consultation which you may wish to have and wish to thank you for your work in promoting the observance of the right to physical and mental integrity in our country.
